

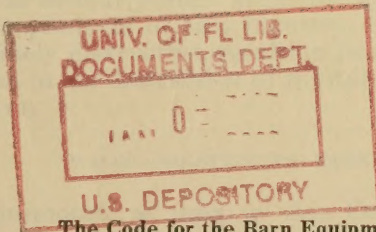
NATIONAL RECOVERY ADMINISTRATION

PROPOSED CODE OF FAIR COMPETITION
FOR THE
BARN EQUIPMENT INDUSTRY

AS SUBMITTED ON AUGUST 30, 1933



WE DO OUR PART



The Code for the Barn Equipment Industry
in its present form merely reflects the proposal of the above-mentioned
industry, and *none of the provisions contained therein are*
to be regarded as having received the approval of
the National Recovery Administration
as applying to this industry

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933



SUBMITTED BY

BARN EQUIPMENT ASSOCIATION

(II)

CODE OF FAIR COMPETITION FOR THE BARN EQUIPMENT INDUSTRY, AN AFFILIATED ORGANIZATION OF THE NATIONAL COUNCIL LIVE STOCK EQUIPMENT ASSOCIATIONS

PREAMBLE

The Barn Equipment Association, a national trade association for this industry representing in its membership more than 75 percent of the production of barn equipment in the United States, by action taken at a meeting in the City of Chicago on the 15th day of June 1933, does hereby subscribe to the policy, provisions, rules, and regulations of the National Industry Recovery Act.

The Barn Equipment Association, by unanimous vote at this meeting, decided to come under the provisions of this act which permit the voluntary adoption of a Code of Fair Competition and authorized the creation of the Executive Committee of five members of the association to draft and present to the Government for Presidential approval the Code which is submitted herewith.

CONDITION OF THE INDUSTRY

The products of this industry are sold to the farmer, largely through dealers. Due to the limited buying power of the dairy farmer, this industry has been in an abnormally depressed condition for the past several years. With the rapidly decreasing consumption of the products of this industry, competitive conditions have been extremely destructive, resulting in severe loss of wages for the worker, and in the destruction of capital values and cash reserves for the producer.

WHAT CONSTITUTES BARN EQUIPMENT

Barn equipment, as used in this Code, includes the following items:

Stanchions, Stalls, Pens, Feed trucks, Milk stools, Bull staffs, Gutter and manger drains, Ventilators, Water cups, Barn scrapers, Supporting columns, Horse stall equipment, Hay racks, Corner feed boxes, Hog pen panel, Cupolas.

Ventilation systems for farm buildings including cupolas; Litter, feed, milk can, and harness carriers and accessories; Kindred items sold with the above.

ORGANIZATION

The Barn Equipment Association was organized on August 2, 1928, under auspices of the Federal Trade Commission and adopted rules of fair trade practice with approval of the Commission on July 11, 1929.

ASSOCIATION OFFICERS

The present officers of the Barn Equipment Association are as follows:

President: W. D. James, James Manufacturing Co., Fort Atkinson, Wis.

1st Vice President: H. B. Megran, Starline, Inc., Harvard, Ill.

2nd Vice President: R. Bruce Loudon, Loudon Machinery Co., Fairfield, Iowa.

Treasurer: R. C. Mitchell, Mitchell Mfg. Co., Milwaukee, Wis.

Executive Secretary: H. L. Ashworth, 125 East Wells Street, Milwaukee, Wis.

EXECUTIVE COMMITTEE

W. D. James (chairman), President, James Manufacturing Co., Fort Atkinson, Wis.

B. B. Bell, President, Starline, Inc., Harvard, Ill.

A. E. Labagh, Treasurer, Loudon Machinery Co., Fairfield, Iowa.

Jos. B. Clay, President, Clay Equipment Co., Cedar Falls, Iowa.

W. H. Miller, Secretary, Ney Manufacturing Co., Canton, Ohio.

MEMBERSHIP OF ASSOCIATION

The membership of the Barn Equipment Association, representing more than 75 percent of the production of barn equipment in the United States, includes the following companies:

Clay Equipment Co., Cedar Falls, Iowa; Gardner Mfg. Co., Horicon, Wis.; H. D. Hudson Mfg. Co., Chicago, Ill.; King Ventilating Co., Owatonna, Minn.; Milwaukee Hay Tool Co., Milwaukee, Wis.; Ney Manufacturing Co., Canton, Ohio; Rassmann Mfg. Co., Beaver Dam, Wis.; Starline, Inc., Harvard, Illinois; Franklin Equipment Company, Monticello, Iowa; Hall Manufacturing Co., Cedar Rapids, Iowa; James Manufacturing Co., Fort Atkinson, Wis.; Loudon Machinery Company, Fairfield, Iowa; Mitchell Manufacturing Co., Milwaukee, Wis.; Olson Manufacturing Co., Albert Lea, Minn.; Rochester Born Equipment Co., Rochester, N.Y.; Bond Foundry & Machine Co., Manheim, Penn.

Manufacturers of barn equipment representing the balance of the production of barn equipment in the United States, which have been invited to become members of this association but have not yet affiliated as members, include the following companies:

Acorn Brand Mfg. Co., Stevens Point, Wis.; Berg Manufacturing Co., Marshfield, Wis.; Fitzgerald Mfg. Co., Merrill, Wisconsin; Weise & Kuhlman, Lester Prairie, Minn.; Bell Manufacturing Co., Beaver Dam, Wisconsin; Grubb Barn Equipment Co., Baraboo, Wisconsin; Middle West Mfg. Co., Beaver Dam, Wisconsin; Dells Manufacturing Co., Wisconsin Dells, Wis.

So far as can be determined by this Association the above lists of members and nonmembers include all of the factors engaged in this industry.

The Barn Equipment Association, in behalf of this industry, does hereby submit and ask for approval of the following Code.

THE CODE

ARTICLE I—PURPOSE

This Code is set up for the purpose of increasing employment, maintaining fair and adequate wages, and eliminating unfair trade practices, to the end of rehabilitating the barn equipment industry in all its phases and enabling it to do its part toward establishing that balance of industries which is necessary to the restoration and maintenance of the highest practical degree of public welfare.

It is the declared purpose of the barn equipment industry and adherents to this Code to restore the income of enterprises within the industry to levels which will make possible the maintenance of fair wages and avoid the further depletion and destruction of capital assets.

ARTICLE II—PARTICIPATION

Participation in this Code, and any subsequent revision of or addition to the Code, shall be extended to any person, partnership, or corporation in the barn equipment industry who accepts his share of the cost and responsibility, as well as the benefit, of such participation by becoming a member of the Barn Equipment Association.

No initiation or entrance fee shall be charged for membership in the Barn Equipment Association, but there shall be levied against all members of the association annual dues in the amount of \$25.00. Additional dues needed to finance the activities of the association in carrying out and enforcing the Code of the industry shall be levied against each member in proportion to the volume of its sales of the items covered by this Code.

ARTICLE III—GENERAL

(1) No provision of this Code shall be interpreted or applied in such a manner as to—

- (a) Promote monopolies.
- (b) Permit or encourage unfair competition.
- (c) Eliminate or oppress, or discriminate against, small enterprises in the barn equipment industry.

(2) This Code or any of its provisions may be cancelled or modified or any approved rule issued thereunder shall be ineffective to the extent necessary to conform to any action by the President of the United States under section 10 (b) of the National Industrial Recovery Act.

(3) Amendments to this Code may be proposed to the Executive Secretary by any member or members of the Barn Equipment Association, or may be initiated by the Executive Committee and may be adopted by the affirmative vote of a two-third majority of the members of the association, and when approved by the President of the United States shall be effective. Any amendments proposed shall be submitted in writing to all members of association not less than two weeks before coming before the association for action.

(4) The Executive Committee and the Executive Secretary of the association shall represent the Barn Equipment Association in all contacts with the Administrator of the National Industrial Recovery Act, or his agents, except if a member of the association shall feel aggrieved on account of the provisions of this Code or of an amendment thereto or rule or regulation made pursuant thereto, such member shall have the right directly to present his position to the President of the United States or his duly authorized agent.

(5) The provisions, rules, regulations, and restrictions set forth in this Code, when approved by the President of the United States, shall become binding upon all producers of barn equipment within ten days after final approval.

(6) *Rights of workers.*—(a) Employees in the barn equipment industry shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee in the barn equipment industry, and no one seeking employment therein, shall be required as a condition of employment to join any company union, or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(c) Employers of labor in the barn equipment industry shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President of the United States.

(d) It is clearly understood that the foregoing paragraphs do not impair in any particular the constitutional rights of the employee and employer to bargain individually or collectively as may be mutually satisfactory to them; nor do they impair the joint right of employer and employee to operate an open shop.

(e) Nothing in this Code is to prevent the selection, retention, and advancement of employees on the basis of their individual merit, as determined by employer, without regard to their affiliation or non-affiliation with any labor organization.

(f) It is expressly stipulated that neither any provision of this Code nor the fact or manner of its preparation, presentation, adoption, or filing shall be construed as constituting a waiver of any constitutional right which the several members of the Barn Equipment Association or industry might otherwise have and enjoy. Any such provision which may limit or abrogate any constitutional right is inserted under the unavoidable requirements of the National Industrial Recovery Act as the same is understood by said members and not voluntarily nor with their approval as a contractual relinquishment of such right.

ARTICLE IV—ADMINISTRATION

ENFORCEMENT

The administration officer of this Code shall be the Executive Secretary of the Barn Equipment Association. He shall be required

to submit and to explain the provisions, purposes, and aims of the Code to all producers of barn equipment, including members and nonmembers of the Barn Equipment Association.

Any producer of barn equipment injured by the violation of this Code shall file with the Executive Secretary a written complaint setting forth the facts in the matter and requesting such relief as may be just.

The Executive Secretary of the Barn Equipment Association is authorized and directed to enforce vigorously, equitably, and without exception a system of discipline for violators of this Code or any of its rules, regulations, or provisions as follows:

A fine against violators, in cases where the violation involves a sale of barn equipment, of an amount not to exceed fifty percent of the established price of the equipment sold.

A fine against violators, where the sale of equipment may not be involved, of an amount not to exceed five hundred dollars (\$500).

The Executive Secretary may use his discretion, as circumstances warrant in substituting an arbitrary fine for the percentage of sale plan.

Violation of any or all rules of the Code may be considered a separate offense for each and every day such rules are violated.

If found necessary to the welfare of the industry or in support of the proper administration of this Code, the Executive Secretary may give full publicity to the facts regarding any violation by any person of any rule or regulation of this Code, and the hearing and determination thereon, without any liability for libel or slander arising therefrom.

Any fines assessed and collected shall be turned into the Association Treasury. Such money shall be available for awarding financial damages to any member injured by any violations. Fines collected and not so used shall be applied to the Association's operating budget.

Any member of the Barn Equipment Association or any producer of barn equipment who is not a member of the association shall have the right to appeal from the ruling or decision of the Executive Secretary and such appeal shall be heard by a representative Arbitration Committee of at least three persons, such committee to be appointed by the Executive Committee of the Barn Equipment Association from the organizations of different members of the industry. Under this provision a separate Arbitration Committee shall be named to handle each appeal and the membership of such committee shall be truly representative for the purpose of insuring the parties a fair hearing, but shall not include any members of the industry connected with or in any way involved in the dispute in question.

The decision of such Arbitration Committees may be appealed by either party to the association as a whole and the decision of the association shall be final and binding. If such association decision is not accepted and complied with by the complainant or defendant the case shall be turned over to the Executive Committee of the industry for submission to the Administrator of the National Industrial Recovery Act.

STATISTICS AND REPORTS

The Executive Secretary shall have the power and authority to require from each manufacturer of barn equipment from time to time such wage and labor reports, information, and records as shall be necessary to the adequate administration and enforcement of the provisions of this Code.

The Executive Secretary shall have the right at all times to examine all records of every producer of barn equipment, whenever such inspection is necessary for the adequate administration and enforcement of the provisions of this Code. It is definitely agreed that any such information obtained by such inspection shall be of a strictly confidential nature, except insofar as disclosure of the facts so obtained may be necessary to the just administration of this Code.

ARTICLE V—HOURS AND WAGES

The minimum wages paid to male employees shall be 35¢ per hour, and to female employees 30¢ per hour, except that apprentices and learners may be paid not less than 75% of the above minimum. The total of such exceptions shall not be more than 5% of the total pay roll; however, any employer in this industry located in a section of the country where a lower minimum wage rate has been prescribed and accepted by the President of the United States in the code of another industry for employees in the same crafts or classifications of labor employed in this industry shall have the right to employ such crafts or classifications of labor at such lower rate.

Employees covered hereby (excluding executives; supervisory staffs and their assistants, traveling salesmen, collectors and commission agents, and all employees engaged in the preparation, care and maintenance of office, plants, machinery and facilities, efficiency research, and designing engineers; planning, stock keeping, order, service, and shipping; outside supervisory service and erecting service), shall work not more than 48 hours in any one week and not more than 40 hours per week average, excepting regular employment reasonably in excess of such standards for not more than 10% of the employees in any operation where required by the nature of their work and further excepting temporary employment in case of emergency.

It is further understood that each manufacturer shall have the privilege of exempting from the provisions of this section a certain number of so-called pensioner employees; i.e., employees who by reason of age or physical disability are not capable of performing the work of an able-bodied man but whom it is desired to retain because of their long connection with the business. Such employees shall be reported separately in the making of necessary current labor reports to the Administrator.

We further agree that, with the approval of the President, the above rates may be revised from time to time in such manner as will currently reflect an equitable adjustment to variations in cost of living.

We further agree not to employ any minor under 16 years of age.

ARTICLE VI—SELLING PRICES

It shall be unfair competition for any producer of barn equipment to sell his product below his own cost, plus a reasonable profit.

The cost of goods sold, as mentioned in the preceding paragraph, shall include not only all direct material and normal direct labor costs entering into the article in question but also a proportionate share of all normal indirect costs of the productive process, such as management, maintenance, operating, and other overhead expenses of both factory and shipping departments plus a proportionate share of the normal administrative, advertising, and selling expense of the business.

ARTICLE VII—TRADE PRACTICE RULES

In asking approval of the trade practice rules adopted by the barn equipment industry, attention is called to the fact that the Barn Equipment Association adopted rules of trade practice under auspices of and with approval of the Federal Trade Commission on July 11, 1929. These rules were amended by the Federal Trade Commission on September 19, 1930. In Group I are listed rules of trade practice previously approved by the Federal Trade Commission, to which the barn equipment industry subscribes and desires to use under the National Industrial Recovery Act. In Group 2 are listed additional rules of trade practice which have been approved by the industry as necessary to the effective administration and enforcement of the Code.

GROUP I

RULE 1. *Interference With Contract.*—The wilful interference by any person, firm, corporation, or association, by any means or device whatever, with any existing contract or order between a seller and purchaser of any product handled by the industry, or the performance of any contractual duty or service connected therewith, such interference being for the purpose or with the effect of dissipating, destroying, or appropriating in whole or in part the patronage, property, or business or another, engaged in such industry, is unfair trade practice.

RULE 2. *Misrepresentation.*—The sale or offering for sale of any product in the industry with intent to deceive customers or prospective customers as to the quantity, quality, substance, or size of such product is unfair trade practice.

RULE 3. *Rebates.*—The payment or allowance of rebates, refunds, credits, unearned discounts, or excessive entertainment, whether in the form of money or otherwise, or the giving of premiums, or extending to anyone, public institutions not excepted, special prices, terms, services, or privileges not extended to all purchasers under like terms and conditions, is an unfair trade practice.

RULE 4. *Price Discrimination.*—Any discrimination in price between purchasers of the same class, excepting discrimination in price on account of the difference in grade, or quality of the product sold, is unfair trade practice.

RULE 5. *Defamation of Character.*—The defamation of a competitor by words or acts which call in question his business integrity,

his ability to perform his contracts, his credit standing, or misrepresentation of the grade, quality, or reliability of his goods is condemned as unfair trade practice.

RULE 6. *Excess allowances.*—The allowance of transportation or trucking charges in excess of the actual or published amount of such charges on products is an unfair trade practice.

RULE 7. *Soliciting Employees.*—The solicitation of the services of Salesmen or other employees of other members of the industry without notice to the employer involved is an unfair trade practice.

GROUP II

RULE 1. *Price Lists.*—In the belief that a uniform method of price quotations will eliminate a great deal of confusion, will eliminate much existing discrimination between purchasers of the same class, and will result in mutual benefits to both the producer and consumer of barn equipment, the barn equipment industry has agreed that all prices published or distributed by the producers of barn equipment shall be the manufacturer's net delivered selling price to the consumer.

All producers of barn equipment shall keep on file at all times with the Executive Secretary copies of all his price lists on barn equipment. Any producer of barn equipment making changes in his price list or lists, or contemplating the issuance of new price lists, shall give the Executive Secretary notice of such change or changes at least two weeks before date on which new prices are to become effective, and he shall not advise his selling organization (salesmen or dealers) of such changes, or contemplated changes, until after the Executive Secretary has been so notified.

Inasmuch as there is a variance in a number of items in various lines manufactured by the several members of the industry, it is hereby resolved that where a quotation is called for on an item not manufactured by a member and he wishes to quote thereon he shall quote the published retail price of the manufacturer of such item. Likewise on items jobbed, the established price of the manufacturer of such jobbed items shall prevail. On unlisted items fabricated for special installation, Article VII shall be the rule to be followed.

Any violation of this plan by any producer of barn equipment is unfair competition.

RULE 2. *Dealer Discounts.*—Definition: The term Dealer for the purposes of this Code shall be defined as one operating a place of business, carrying a stock of goods, selling at retail for the purposes of this Code shall be further limited to those dealers who handle lines kindred to a Barn Equipment, as, for instance, farm implements and hardware, pumps, windmills; also general stores carrying hardware, dealers in lumber, building supplies, farm seeds, grains, or feeds.

Builders, building contractors, carpenters, or cement contractors, whether or not they carry stocks of builders hardware or barn equipment, shall not be considered as dealers or jobbers and shall in no instance be allowed a discount.

It shall be unfair competition for any producer of barn equipment to allow to a dealer a discount of more than 30 percent off consumer price schedule.

No producer of barn equipment shall permit his products to be handled by a dealer or agent standing between producer and consumer who violates any of the provisions or articles of this Code.

RULE 3. *Jobber Discounts.*—Definition of Jobber: The industry hereby records its approval of the definition of a qualified wholesale distributor to be one whose principal business is selling to the retail distributor, carries a well-selected stock of merchandise, buys in suitable quantities, warehouses a reserve stock for retailers within a radius of economical distribution and convenience of service, resells in proper units to the retailer as economically as possible, assumes the credit risk, and such other obligations as are incident to the transportation, warehousing and distribution of the products of the industry.

It shall be unfair competition for any producer of barn equipment to allow a discount to a jobber or a national retail distributor of barn equipment greater than 30 and 20 percent from consumer price schedule.

RULE 4. *Consignments.*—It shall be unfair competition for any producer of barn equipment to distribute barn equipment on consignment to any dealer, jobber, or national retail distributor.

RULE 5. *Terms.*—As a safeguard against discrimination between consumers, dealers or jobbers because of unequal terms, the Barn Equipment industry subscribes to the principle of uniform terms of sale and credit. These terms shall be: Not to exceed 60 days, 2% in 10 days, 3% for cash with orders, 6% interest on deferred payments.

Any violation of these terms is unfair competition.

RULE 6. *Freight Rates.*—To avoid unfair competition among the producers of barn equipment which may develop through differentials on freight rates as a result of the widely scattered locations of the manufacturing plants of the producers of barn equipment, the barn equipment industry agrees that all price quotations to dealers shall be made on the basis of f.o.b. factory or branches, with carload freight rates from factory to branch added by branch houses east of Pittsburg, and such increase shall be reflected in the price schedules of the producers, and to these prices there shall be added less than carload freight rates to the point of destination.

On sales to jobbers or national retail distributors, all goods shall be sold f.o.b. factory with freight allowed, not to exceed 75¢ per 100 pounds.

RULE 7. *Plans and Service.*—It shall be unfair competition for any producer of barn equipment to furnish a prospective customer with detailed plans or detailed blueprints of the proposed installations of barn equipment without making an adequate charge for same, but detailed blue prints of an installation are permitted free after a job is sold. Free plan service before a sale shall be confined strictly to furnishing only floor plans and stock cross sections. All other plans shall be charged for at cost plus a reasonable profit, as set forth in Article 7.

It shall be considered unfair competition for any producer of barn equipment to provide free installation service or supervisory installation service on barn equipment installations. In cases where it is necessary for the seller of barn equipment to provide some supervisory service, such service shall be charged for on the basis of cost plus a reasonable profit, as set forth in Article 7.

RULE 8. "*Trade Ins.*"—It shall be unfair competition for any producer of barn equipment to accept "trade-ins" of barn equipment, or any other type of equipment, materials, property, or supplies to apply on the purchase of new barn equipment being sold. The barn equipment industry is agreed that the producer, dealer, or distributor of barn equipment has no facilities for disposing of such items and believes that the owner of such equipment can himself dispose of it to better advantage. This restriction is offered to eliminate a method of competition which has in the past proved unfair competition between producers and resulted in destructive price cutting.

RULE 9. "*Unfair Comparisons.*"—It shall be unfair competition for any producer of barn equipment or any of his salesmen or agents to carry with them barn equipment manufactured by another producer, or to show or exhibit same in the sales rooms or sample rooms or elsewhere, for the purpose of using same for comparison in sales talks to the prospective purchaser.

RULE 10. "*Distressed Merchandise.*"—It shall be unfair competition for any producer of barn equipment to quote prices below that of producer's published price list on any used, rebuilt, reclaimed, or so-called "distressed" merchandise, including close-outs or discontinued items, to any prospective purchaser where there is competitive bidding for the contract.

RULE 11. "*Differential on Galvanized Equipment.*"—Quotations on galvanized barn equipment shall be not less than 20 percent higher than quotations on similar painted barn equipment.

RULE 12. "*Patents, Trademarks, and Trade Names.*"—No person in this industry shall imitate the trademarks or trade names of a competitor which results in deception to buyers and consumers, which may be an invasion of property rights of such competitor. The circulation of threats of suits for infringement of patent or trademark among customers of a competitor, not made in good faith, for the purpose of harassing and intimidating customers, is an unfair trade practice.

RULE 13. "*Production Control.*"—We agree that, because existing productive capacity far exceeds the normal demand, for a period of twelve (12) months from the effective date of this Code, not to increase our productive capacity except insofar as it might be normally increased through the substitution of new and improved equipment for existing equipment or through more efficient methods of manufacture.

In view of the foregoing agreement we specifically ask that the Administrator establish a rule which will make it necessary for any concern desiring to undertake the manufacture of barn equipment to show a necessity for such increase in productive capacity or that the product he intends to manufacture will better serve the public interest than such products as are now available.

NEW RULES

In submitting above trade practice rules for approval, the Barn Equipment Association desires to be given the privilege of offering for approval in the future such additional rules as experience may prove desirable, or to amend or withdraw old rules which prove unworkable.

Respectfully submitted for the Barn Equipment Industry.
Executive Committee of Barn Equipment Association:

----- (Chairman) -----

Dated at Milwaukee, Wis., this
----- day of -----, 1933.

(Executive Secretary)



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